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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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In re LEVI D., a Person Coming Under the Juvenile  
Court Law.

C081705

SACRAMENTO COUNTY DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,

(Super. Ct. No. JD236424)

Plaintiff and Respondent,

v.

K.C. et al.,

Defendants and Appellants.

C.D. and K.C., parents of the minor, appeal from orders of the juvenile court denying relative placement and terminating parental rights. (Welf. & Inst. Code, §§ 366.26, 395.)<sup>1</sup> Mother argues the court erred in failing to place the minor with the

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<sup>1</sup> Undesignated statutory references are to the Welfare and Institutions Code.

maternal grandmother, who had been approved for placement pursuant to the Interstate Compact on Placement of Children (ICPC), and did not properly apply section 361.3 in assessing either the maternal grandmother or the paternal grandmother for placement of the minor. Both parents argue the court erred in failing to find they had established the beneficial parental relationship exception to the preference for adoption as a permanent plan.<sup>2</sup> We affirm.

### FACTS

The Sacramento County Department of Health and Human Services (Department) filed a petition in September 2015 to detain the three-day-old minor, Levi D., due to evidence of substance abuse issues on the part of both parents and father's mental health and anger issues. The juvenile court detained the minor but did not place him with his siblings, who had been subjects of a prior dependency, because their caretaker, the paternal grandfather, declined consideration for placement. The detention report provided facts regarding the prior dependency, including that mother and the maternal grandmother, S.W., were suspected of abducting the children in that case and taking them out of the county.

The jurisdiction/disposition report, filed in October 2015, stated that the parents visited in late September and mid-October and had called several times for visitation. The social worker sent an ICPC request to evaluate S.W. who lived in Wisconsin. The report stated both parents were subject to bypass of services based on the prior dependency where they had failed to reunify with the minor's siblings. An addendum report stated father was not visiting the minor regularly. At the jurisdiction/disposition hearing in November 2015, the court sustained the petition, bypassed services for the

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<sup>2</sup> Father joins mother's arguments insofar as they would benefit him.

parents, and set a section 366.26 hearing to select a permanent plan for the minor. The court also set a placement hearing.

The report for the placement hearing stated both S.W. and the paternal grandmother (K.D.) were being assessed for placement. Other relatives had declined the assessment. The minor's foster family also was interested in permanent placement of the minor. At the placement hearing in early December 2015, the court noted that the ICPC for S.W. had not been completed and K.D., who had recently expressed interest in placement, had been given paperwork to begin an assessment. The court continued the hearing for further information on placement.

An addendum report on placement stated that the ICPC was still pending. K.D. spent time with the minor's siblings but had yet to meet the minor. K.D. was a former methamphetamine user who quit on her own in 2006. She lived in a small studio apartment with her boyfriend and felt able to meet the minor's needs on her limited income with financial assistance. K.D. worked part-time and her boyfriend received general assistance but was trying to get supplemental security income. While K.D. reported being physically and mentally healthy, her boyfriend had been diagnosed with bipolar disorder but was stable with ongoing therapy and medication. K.D. planned to have her boyfriend watch the minor while she was at work. The Department was concerned that K.D. had not participated in drug treatment. K.D.'s home study was not yet complete. The placement hearing was again continued for further information on the pending assessments.

The placement report, filed in mid-January 2016, stated K.D.'s kinship assessment was still pending while she made her home safe for the minor. K.D.'s criminal background check showed a suspended or surrendered California driver's license and fraud convictions. K.D., somewhat irritated by the questions about her driver's license, told the social worker she had surrendered her California license to get a driver's license in Idaho and that she did not need a license in California because her boyfriend had a

valid license and could transport the minor. K.D. also had an active warrant which she told the social worker she had cleared and provided a copy of her agreement to appear. K.D. remained interested in placement although she had not yet had a visit with the minor. The Department requested a visit for her. When confronted about her failure to return telephone calls from the Department, K.D. said she did not think it was her responsibility to do so. The Department found a report in the siblings' dependency case that K.D. had been homeless and not stable during that time. K.D. responded that she had not been "homeless and on the streets" she was just in between homes and now has housing.

The placement report stated the most recent information, as of the time the report was prepared, was that S.W. had not responded to the ICPC worker and it appeared the referral would be denied. The Department was concerned about S.W.'s ability to protect the minor from abuse because S.W.'s Facebook page contained words of encouragement about mother's pictures regarding prostitution.

The current caretakers were in the process of getting a home study through the foster family agency and had committed to adoption of the minor. The report recommended continuing the placement with the current caretakers. The placement hearing was again continued for the ICPC evaluation.

The ICPC evaluation was received in late January 2016 and approved the minor's placement with S.W. in Wisconsin. The evaluation cautioned that S.W. had a serious back condition, for which she had undergone two surgeries with a third surgery pending, and which could affect her parenting over time. Further, the evaluator recommended that the California worker should discuss what resources were available to assist S.W. when she returned to school. S.W. had five children of her own, two of whom were raised by their father and she had very little contact with them. S.W.'s income included Social Security disability, food stamps, and wages from a part-time work-study program. She was taking several medications for pain. Her criminal history was limited to a 22-year-

old conviction for theft. S.W. said that she was willing to care for the minor as long as needed but expected mother would “get with it” and work to reunify. If necessary, she would accept legal guardianship or adopt the minor. She planned to take a semester off if the minor was placed with her and would arrange for day care when she returned to school. S.W. sent a letter to the court in March 2016 stating that she disagreed with representations that the county had been unable to contact her because she had spoken to every social worker and other person involved in the case who called her and provided information and contact numbers. S.W. also disagreed with the statement that she condoned the mother’s prostitution. She further disagreed with statements that she helped mother abscond from the county with the minors in the prior dependency. S.W. noted she had passed the background check, the ICPC had been approved, and the minor should be placed with her. S.W. acknowledged she had never met the minor but wanted to be a part of his life and upbringing.

The assessment for the section 366.26 hearing filed in March 2016 recommended termination of parental rights and a permanent plan of adoption. The Department records showed that of 28 visits, mother cancelled or was absent from 16 and was as much as 20 minutes late to five others. The incidence of cancellation increased markedly in December 2015 and remained high up to the date of the report. Father also visited sporadically as well as arriving late and leaving early. K.D. visited once in February 2016 but said her work schedule prevented her from visiting more. She said that she missed an earlier visit because father told her the visit was cancelled and she was confused. K.D. clarified her earlier statement about her methamphetamine usage, saying, “it was never a problem” and she “didn’t need” treatment. She noted that her boyfriend had a lapse in insurance coverage and did not have his medications for a week. The effect on her boyfriend was that he got “crabby” and stayed away from people when he was not on his medication. K.D. did not see that it was a problem because he faithfully

took his medication. The Department did not recommend placement with either grandmother.

At the combined relative placement/section 366.26 hearing, the court found that placement in the home of either grandmother was inconsistent with the best interests of the minor. Although the parties argued that placement with either grandmother would facilitate contact with the minor's siblings, the court found no evidence to support that argument. The court further found K.D. had no relationship with the minor and relied upon father to arrange visits rather than taking any initiative to visit on her own. Additionally, K.D. had a history of substance abuse and had an active warrant, albeit for a minor offense, which suggested a lack of moral character and responsiveness to authority. The juvenile court was also concerned about K.D.'s boyfriend whose mental health issues and responses to lack of medication presented a source of concern about his ability to be a backup caretaker for the infant minor. While S.W.'s home was approved for placement, she needed surgery and the evaluator had concerns about her ability to parent long-term. Further, S.W. did appear to support some of mother's negative behaviors and did not deny the Facebook post was hers. Moreover, S.W. never had any contact or interaction with the minor. The court found it would be extremely detrimental to the minor to remove him from his current caretakers.

Mother testified at trial that, although there were some canceled visits, she did visit the minor and believed she had a bond with him. Father did not testify but made a statement to the court that he believed he and the minor had bonded and he had visited the minor. The court found the minor adoptable and that the parents had not established the beneficial parental relationship exception because the visitation was not regular and there was no parent-child bond within the meaning of the statute.

## DISCUSSION

### I

Mother contends the juvenile court abused its discretion in denying preference for placement of the minor with either the maternal or paternal grandmother.

Section 361.3 provides, in relevant part: “(a) In any case in which a child is removed from the physical custody of his or her parents pursuant to section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative . . . .” In determining whether relative placement is appropriate, the court shall consider, among other things, the best interest of the child and the nature and duration of the relationship between the child and the relative. (§ 361.3, subd. (a)(1) & (a)(6).) “Subsequent to the [disposition] hearing . . . , whenever a new placement of the child must be made, consideration for placement shall again be given . . . to relatives who have not been found to be unsuitable and who will fulfill the child’s reunification or permanent plan requirements.” (§ 361.3, subd. (d).) In considering the relative placement after the disposition hearing, the social worker must consider “whether the relative has established and maintained a relationship with the child.” (§ 361.3, subd. (d).) However, when the permanent plan is adoption, the placement preference shifts to the current caretaker and the relative placement preference no longer applies. (*In re M.M.* (2015) 235 Cal.App.4th 54, 63.) Placement must be in the best interest of the minor. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 321.)

At the time the juvenile court denied placement with either grandmother, the relative placement preference no longer applied. Adoption was the permanent plan, no new placement was required and the best interests of the minor in permanence and stability supported placement with the current caretakers, who had cared for the minor almost since his birth.

However, the court also analyzed the factors suggested in section 361.3 and concluded that on balance, the applicable factors did not support placement of the minor

with either grandmother. While S.W. had been considered for placement since the beginning of the case and ultimately received ICPC approval, her delay in cooperating with the Wisconsin social worker and her equivocal statements about willingness to care for the minor and provide him permanency coupled with her lack of contact with her own children and the absence of any relationship whatsoever with the minor raised questions about her commitment to caring for the minor. Further S.W.'s medical condition, which required significant pain medications, called into question her ability to provide the necessary care for an infant. Even the Wisconsin social worker who approved the placement was concerned about S.W.'s ability to parent over time. S.W. had apparently approved of mother's negative behavior over time and did not deny the Facebook post condoning mother's prostitution was hers, raising questions about her moral character. The evidence supported the juvenile court's denial of placement with S.W.

As to K.D., although she lived locally, she made little effort to visit the minor and interact with him, leaving the burden of making arrangements for visits to father. She had a history of methamphetamine use and, while she had been clean for many years, had never participated in relapse prevention. K.D.'s boyfriend and proposed alternative caretaker for the infant, had been diagnosed with bipolar disorder and was on medication and ongoing therapy for the condition but had at least one period where he was not compliant with his medication and his coping mechanisms were not compatible with caring for a young child. As with S.W., K.D. had no relationship with the minor and questionable judgment in recognizing and dealing with potential safety issues for the minor.

The relative placements were considered and assessed. Ample evidence supported the court's findings regarding the factors to be considered. The juvenile court did not err denying relative placement to either grandmother because such placement would be detrimental to the minor's best interests.



## II

Both parents argue that the juvenile court erred in failing to find the beneficial parental relationship existed and constituted an exception to the preference for adoption as a permanent plan.

At the selection and implementation hearing held pursuant to section 366.26, a juvenile court must choose one of the several “possible alternative permanent plans for a minor child. . . . *The permanent plan preferred by the Legislature is adoption.* [Citation.]’ [Citation.] If the court finds the child is adoptable, it *must* terminate parental rights absent circumstances under which it would be detrimental to the child.” (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368.) There are only limited circumstances which permit the court to find a “compelling reason for determining that termination [of parental rights] would be detrimental to the child.” (§ 366.26, subd. (c)(1)(B).) The party claiming the exception has the burden of establishing the existence of any circumstances which constitute an exception to termination of parental rights. (*In re Cristella C.* (1992) 6 Cal.App.4th 1363, 1373; *In re Melvin A.* (2000) 82 Cal.App.4th 1243, 1252; Cal. Rules of Court, rule 5.725(d)(4); Evid. Code, § 500.)

Termination of parental rights may be detrimental to the minor when: “The parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) However, the benefit to the child must promote “the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575;

Neither parent has carried the burden to establish the exception in this case. Neither parent visited regularly. While failing to demonstrate this element of the exception is enough to justify the court's finding that the exception did not apply, because of the tender age of the minor, the failure to visit also made it impossible to create and solidify any significant, positive emotional relationship between the parent and the minor. There was absolutely no indication that termination of parental rights would be detrimental to the minor or that the minor would be greatly harmed by the termination. The juvenile court did not err in failing to find the beneficial parental relationship applied in this case.

The orders of the juvenile court are affirmed.

We concur:

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Mauro, J.